

MT LEGISLATIVE HISTORY

Chapter 434 1989

Bill (H) 568 S _____

Original bill & hist. ____C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Feb 15 ☒ C

Hearing Date(s) Mar 20 ☒ C

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Date Out Feb 15 ☒ C

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Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

HEARING ON HOUSE BILL 568

Presentation and Opening Statement by Sponsor:

Representative John Mercer of Polson, House District 50, opened the hearing. He said the bill would remove juveniles from jails by providing secure detention through a temporary arrangement with the state correctional schools while counties develop their own resources. The bill deals with detention after arrest but before trial, he said. There is a significant problem in Montana and the youths are sometimes held in jails. The bill attempts to recognize that the detention is the financial responsibility of the state government, but is the responsibility of the local government to best determine how the resources would be allocated. He said there was a 2-year delay in the implementation date to allow local governments to come up with a means of detention.

List of Testifying Proponents and What Group they Represent:

Rep. Bill Strizich, Great Falls, House District 41
Bob Mullan, Department of Family Services
Gordon Morris, Montana Association of Counties
Mona Jamison, Montana Juvenile Probation Association
Abe Demmis, Probation Officer
John Connor, Montana County Attorney Association

List of Testifying Opponents and What Group They Represent:

None

Testimony: Representative Strizich supported the bill's goals which reflected a mature, civilized society. State law passed a bill in 1987 that required all youth be held in a juvenile facility with delayed implementation to become effective July 1, 1989. He said a second area of concern was the Juvenile Justice Prevention Act which dates back to 1974. It requires removal of all youth from adult facilities by November of 1988, as a national policy. The state's receipt of grants requires progress towards this end. The third area of concern was federal case law, he stated. The Tuxberry decision from Oregon stated that jailing youth was a violation of due process and said that youth do not belong in jails. The fourth concern, he stated were the national standards brought forth by the National Association of Counties, the National Association of Sheriffs and the Bar which recognize that children should not be addressed by adult facilities. Separation is a very

serious issue, he said, urging support of the bill. None of the jails in the state provide the kind of separation required by law, he stated, and youths shouldn't be subjected to situations which might occur in adult facilities.

Steve Nelson said that predispositional youths are usually held at home, in foster care or in shelter care facilities. About 5% are held in jail, he said. A number of youths are sent to Pine Hills for 45-day evaluations. The youths that are currently in jail and in Pine Hills School number from 7 to 12 at any given time. He said a few years ago, there were approximately 2500 kids who were held in jail during a year's period. Last year, he stated, there were 300-400, so there is a decrease and a change in practice.

Bob Mullen presented written testimony to the committee.
(Exhibit 2)

Gordon Morris appeared before the committee. He suggested expanding the Statement of Intent to include an interim study on the subject of youth detention during the coming biennium. The liability issues that exist relating to the incarceration of youth sit squarely on the shoulders of county commissioners and county sheriffs, he said. He called attention to the effective date, saying the cost of evaluations would be born by the county upon the enactment of the act. He urged leaving the language intact. Otherwise, he said he would be in two years with a bill to leave the expense in the Department of Family services.

He said he felt Section 14 was confusing, in that it referred to Chapter 475 in the Session Laws of 1987, saying Sections 1 through 13 are effective in October 1, 1987. He said that the Session Laws {subsection (3)} refers to Section I of the 1987 session laws making the provision effective July 1, 1991. He said that was significant from the standpoint of the counties. He felt that changed the effective date and he supported that. He supported the bill as presented.

Mona Jamison appeared in support of the bill.

Abe Demmis said that in January, he had a 12-year-old female juvenile with a lengthy list of offenses. One was a serious assault against her parents. The judge ordered her to be held in a secure facility in Missoula and the county jail was the only facility that qualified. The teenager was denied access because the facility was full.

It was a dilemma for the youth officers as there is no proper facility for this type of youth.

John Connor said that county attorneys represent the counties in civil matters. For that reason, they strongly support this legislation.

Questions From Committee Members: Senator Jenkins asked if the department had full control of funding regarding the detention of youth. Rep. Mercer said it would give the department control over the state portion to the extent that it would start with the department. He thought "administered" might be a better word.

Senator Jenkins asked if there wasn't presently a law which didn't allow state-funded programs to shift their financial responsibilities to counties. Rep. Mercer said he didn't know if there was such a law but that this bill has state funding.

Closing by Sponsor: Rep. Mercer closed the hearing saying this was a problem that couldn't be ignored.

DISPOSITION OF HOUSE BILL 568

Discussion: Senator Halligan said he would like to request an interim study separate from the bill on youth detention.

Amendments and Votes: None

Recommendation and Vote: Senator Halligan MOVED that House Bill 568 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 511

Presentation and Opening Statement by Sponsor:

Representative John Mercer of Polson, House District 50, opened the hearing. He said the bill dealt with Montana Trust Indentures. The Senate did pass over to the House Senate Bill 313 which dealt with the same subject. He felt the issue could be addressed with Senate Bill 313 and urged that House Bill 511 be tabled by the committee.

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-20-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP			✓
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Roll call attach to minutes.

March 26, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 568 (third reading copy -- blue), respectfully report that HB 568 be concurred in.

Sponsor: Mercer (Halligan)

BE CONCURRED IN

Signed: _____
Bruce D. Crippen, Chairman

SCFHB568.320

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Juvenile Jail Removal Plan

Bob Mullen, Director
Department of Family Services

The short-term plan developed by the Juvenile Jail Removal Committee will remove juveniles from jails by providing secure detention through a temporary arrangement with the state correctional schools while counties develop their own resources. The Montana Board of Crime Control has made a commitment to assist local governments plan and implement community-based detention options.

The committee's recommendation that development of alternative programs, such as holdovers and attendant care programs, is of utmost importance. This recommendation is consistent with the philosophy of DFS, and other human service providers, that providing care for youth as close to home as possible and in the least restrictive setting is desirable. Providing services in the community setting is also seen as being less costly than providing services in a secure facility. The committee's approach will allow the time needed to begin developing, or using, community options and to continue to quantify the need for secure beds. Clearly, current youth detention data may not be an accurate reflection of the future needs once more affordable, alternative care is made available in the communities.

Under the proposed plan, the two youth corrections facilities will continue to offer detention/evaluation services for a two year period following the implementation of this legislation. The committee felt, and DFS agrees, that it is imperative that a fee for service be charged in an effort to encourage the development of community based alternatives. At the end of the two year period, the state youth correctional facilities intend to be out of the predispositional detention and/or evaluation business.

FUNDING:

It is the committee's intent to seek a state-wide funding mechanism which would generate slightly more than \$1 million.

Ninety percent of the collected funds will be distributed through DFS to

counties to provide for the predispositional needs of youth having contact with the justice system. The remaining ten percent will be retained by DFS for a grant in aid program to assist those communities experiencing activity above the norm and in funding department aftercare needs. The distribution formula will be based on youth population.

Counties will access their funds by developing a plan and submitting the plan to the Local Youth Services Advisory Councils for written review. The involvement of the Local Youth Services Advisory Councils is considered critical because the councils are responsible for planning for the provision of youth services in Montana.

DFS will release each counties allocation provided the plans meet minimal requirements. Funds thus distributed can then be used by the Youth Courts for purchasing services, either community based, regional, or during the transition period, from the state correctional schools.

3-20-89

DATE _____
Judiciary _____

[illegible]

A vote was taken on the amendment and CARRIED unanimously.

Recommendation and Vote: Rep. Darko made a motion DO PASS AS AMENDED, motion seconded by Rep. Wyatt. A vote was taken and CARRIED unanimously.

HEARING ON HOUSE BILL 568

Presentation and Opening Statement by Sponsor:

Rep. John Mercer, House District 50 stated that initially, he would like to focus the Committee in as to what this bill is about. HB 568 is dealing with pre-dispositional detention of juveniles. That is from the time the juvenile would be taken into custody prior to the time that a judge would make a determination that the youth may be a delinquent. Currently, there is a Montana statute that takes effect as of July 1, 1989 which states that no juvenile in this pre-dispositional setting can be held in an adult jail. This raises a significant problem for Montana, as there will need to be some sort of alternative settings in which to hold these particular youths. As a result of that problem, the State Youth Advisory Council in connection with the Board of Crime Control set up a youth detention task force which did a study bringing this bill before the Committee. This bill attempts to set up a provision (which would delay the current project for an additional 2 years) where dollars would be collected at the State level and presented to the local governments for local decisions. Decisions to be made are as to what is the best placement for the youths that are in this pre-dispositional status. Rep. Mercer commented that there were a number of different entities that participated in the preparation of this study and he believes that the conclusions that they have come up with are the best in order to deal with this particular situation. He also asked that the Committee pay close attention to the fiscal note. The current law, as it is on the books, is going to put a fiscal impact of approximately 1 million dollars on local government. If this bill is passed, however, that fiscal impact will be avoided for a couple of years. Rep. Mercer feels that in order to have sufficient time to prepare for the mandates that are being required in connection with the detention for the juveniles pending disposition, it is important to try and avoid that impact.

Testifying Proponents and Who They Represent:

Rep. Bill Strizich, Great Falls Deputy Probation Officer
Steve Nelson, Board of Crime Control
Robert Mullen, Director, Dept. of Family Services
John Connor, Dept. Justice, County Prosecutors Services Bureau
Howard Gipe, Flathead County Commissioner
Dave Demmons, Missoula Chief Probation Officer
T. J. Gipe, Missoula Probation Association

Geoff Birnbaum, President Montana Childcare Assoc., Missoula

Proponent Testimony:

Rep. Bill Strizich expressed to the Committee that over the past several years he has worked very hard to try and find solutions in Great Falls that adequately deal with the problem of youth detention in the judicial district that he works in. Rep. Strizich stated that the goal of the removal of youth from adult jails is essentially derived from a collection of sources which are not only perceived to be mandatory, but a reflection of matured society. Removal of youth from adult facilities finds us primarily in several areas: 1.) In 1987 the legislature recognized that youths held past a detention hearing must be placed in a juvenile facility. 2.) The federal mandate of the Juvenile Justice Delinquency Prevention Act called for a total removal of all juveniles from adult facilities by December 1988. The reauthorization of this act and the flow of grant funds to our state from that act does build in some discretion to allow states to continue participating as long as they make an unequivocal commitment to removal. Rep. Strizich stated that what brought this problem to focus for many of those involved in the business is a case that arose in Oregon, referred to as the Tooksbury Decision. This decision states that there is no adult facility that can meet the needs of these kids. What this decision found, is that the people that placed these kids in jail were acting irresponsible and were being found personally liable for the things that happened to those kids while they were placed in adult jails. Rep. Strizich stated that none of the jails in the state, whether they were constructed in recent years or are of some vintage are capable of meeting the needs of providing the separation required under the law. To provide this separation under law and proper practice we need not only to physically separate the cells, but also to insure that these children who are under custody awaiting disposition are not subjected to dangerous situations. Even though most jails currently try to maintain a separation, the environment found in the jails is just not conducive to supervision of youth. Alternatives for the detention of children are not only needed from an ethical or moral stand point, but from a basis that in order to impact delinquency problems we need to focus on these special needs. Rep. Strizich expressed that continuing to detain kids in adult jails is not good public policy and he feels personally as well as professionally that it is barbaric.

Steve Nelson commented that a great deal of research has been done over the last decade regarding jail population. The juvenile detention problem tends to be very dynamic and is not a static issue. The decisions about whether or not a youth is placed in jail is not a hard and fast decision, it is very subjective. Consequently, they have seen great fluctuations on the practices of using jails for holding

kids. Mr. Nelson stated that over 15 years ago, one in four youth that appeared before the Juvenile Justice System spent time in jail. Over the course of time they have seen a number of shelter care resources, foster care facilities and resource care centers that have had a tremendous impact on the juvenile detention problem. In the last 5 years there has been a 75% reduction of the number of youths that have been held in jail; therefore, the population of the State Correctional Facilities has virtually gone up by equal amounts. The conclusion of the study was that the counties were more reluctant to probation officers and reluctant to use county jails for the detaining of youth. Mr. Nelson stated that the average population of youth undergoing 45 day evaluations at the correctional facilities is 29. Based on the number of youth that are in jail and in evaluations they came up with a need for a little over 22 secure beds at any given time in the State of Montana.

Bob Mullen stated that the plan that was developed by the Juvenile Jail Removal Committee is for removal of juveniles from jail by providing secure detention through a temporary arrangement with the State Juvenile Correction Schools while counties developed their own resources. The Board of Crime Control has committed to assisting local governments plan and implement community based programs. The Committee felt that local decision making is imperative and essential to successful detention planning. To plan for removal will also provide the funding source to counties to provide secure detention or detention alternatives. The Committee's recommendation that development of the alternative programs, such as hold overs and attended care programs is of utmost importance. This recommendation is consistent with the philosophy of the Department of Family Services and other human service providers who believe in providing youth with care as close to home as possible and in the least restrictive environment. Mr. Mullen continued that providing services in the community is also seen as being less costly than a holding a youth in a secured facility. Because of the numbers of youth that require secure detention or evaluation are so few, changes in how youth are dealt with locally could reduce the need for secure beds state wide. The Committee's approach will allow the time needed to begin developing or using community options and to continue to quadify the needs for secure beds in the future. Under the proposal developed by the Committee, Mountain View will continue to offer detention and evaluation services to girls, as will Pine Hills located in Miles City continue to offer the same services for boys. On a fee for service basis, for a two year period following the implementation of this legislation, the Committee feels that it is imperative that a fee for service be charged in an effort to encourage the development of community based alternatives. At the end of this two year period the State Institutions intend to be out of the business providing pre-dispositional detention and evaluation services. Counties are encouraged to develop

multi-county or regional detention facilities to provide for their long term detention needs. This can be accomplished through interlocal agreement between counties or by contracting with the private service. Additionally, Mr. Mullan stated that it is the intent of the Committee to seek a state wide nonproperty tax funding mechanism that would generate just over 1 million dollars. 90% of the funds collected will be distributed through the Dept. of Family Services, whereas the counties will provide for the pre-dispositional needs of the youth having contact with the justice system. The remaining 10% of the fund will be retained by the Dept. of Family Services for a grant to assist those communities experiencing activities above the normal level. The distribution formula will be based on youth population within the counties. Mr. Mullen stated that the counties will access their funds by developing a plan for the provision of pre-dispositional services and submitting it to the local Youth Service Advisory Council for review. As local Youth Service Advisory Council's are responsible for planning for the provision of youth services in Montana, it is considered essential that they are kept informed and involved in the process. The Dept. of Family Services will release each counties allocation providing the plans meet minimal requirements. Funds thus distributed can then be used by the youth courts for buying services, either community based, regional, or during the transition period from state correctional schools.

John Connor informed that the County Attorney is the legal advisor to the county as well as to the elected officials within that county. As such, there is much concern with the liability of the county and those people who are elected or employed to represent the county. Mr. Connor stated that the area of juvenile detention has been one in which recent years has created considerable concern on the part of local officials and is well directed toward alleviating this threat of liability to the counties.

Howard Gipe, stating some concerns and difficulties that Flathead County has recently come across involving the sheriff and the District Court commented that as of 1989 they have no options. He stated that Flathead County has probably as good a facility or juvenile detention center as anywhere in the state. At the present, they are operating a juvenile detention center that they are having funding problems with. Mr. Gipe stated that he is full support of this bill; however, having one problem with the evaluations on Page 14, Line 15. He asks that the State assume the cost of evaluations as they have in the past.

Dave Demmons, speaking of a recent case where a 13 year old girl was transferred from Mountain View to Missoula County where they refused to take her due to the fact that they had two juvenile males at the time and they didn't have room for her. The two main issues that Mr. Demmons wanted to stress

are: 1.) What kind of effect do we have on youths that are in fact placed in jail, and 2.) What do you do with the youths that cannot be placed in an appropriate facility. These youths are dangerous and present a probability of running away.

Mona Jamison of the Montana Juvenile Probation Association stood in support of HB 568 and urged the Committee's favorable consideration.

Geoff Birnbaum spoke of the impacts that juvenile detention centers have on his program, which is an open shelter program for other youngsters who are in crisis and need a place to stay. Detention is not allowed under a number of laws and case analysis in county jails. The reluctance to use the resources that can currently be identified in Montana brings pressure onto the other community centers that are available. The attention homes and shelter facilities can be an effective alternative, and there are other more restrictive alternatives in the proposal. Namely; holdover, which are programs of small local detention; youth attendant programs, where probation hires a person to sit with the youth for the period of time necessary to hold them over, and home detention where the youth is ordered home and placed on detention there. The previous mentioned alternatives are all very important as well as being contained within this bill, but it is equally as important that there is going to be the need for simple straight forward detention. This bill allows for development alternatives and serves to clean up the system so that youngsters who don't belong in open settings can be put in appropriate secure settings while their case can be resolved and they can be placed more permanently.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: None.

Closing by Sponsor: Rep. Mercer handed out amendments (EXHIBIT 4) dealing with the effective date that did not properly get put into the bill in the beginning. He stated that we must remember what a unique and unusual situation this is due to the low number of children that are being dealt with, as it is hard to think of having a detention facility in every community because of the cost. The idea behind this bill is to put the money in the hands of the people who have to deal with these kids and let them determine what may work best for them. Also, on the concept of the county commissioners

being responsible for evaluation, it is the intention of this bill that when the money becomes available in two years, they want that money to become their responsibility rather than the states responsibility so there can be an incentive to do more evaluations locally, or at least closer to where the youth is. Rep. Mercer handed out for the Committee's review the Juvenile Jail Removal Initiative which explains in full the intent of the program (EXHIBIT 5).

DISPOSITION OF HOUSE BILL 568

Motion: A DO PASS motion was made by Rep. Gould, motion seconded by Rep. Darko.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Mercer moved amendments dealing with the delayed effective date (EXHIBIT 4). He also addressed the issue that is raised on page 14, section 7 regarding the County Commissioners being responsible for the cost of evaluation. He requested that it also be a delayed effective date. Motion seconded by Rep. Aafedt.

Recommendation and Vote: Rep. Mercer motioned DO PASS AS AMENDED, seconded by Rep. Gould. A vote was taken and CARRIED unanimously.

HEARING ON HOUSE BILL 621

Presentation and Opening Statement by Sponsor:

Rep. Tom Nelson, House District 95 stated that HB 621 represents some technical amendments to the Uniform Health Care Information Act that was adopted by this legislature in 1987. The Act was adopted to protect the confidentiality of health care information while simultaneously providing the procedures necessary for an orderly and uniform process of disclosure. HB 621 addresses various provisions of the Uniform Health Care Information Act which have proven in practice to be unduly burdensome, restrictive, unnecessary and in some instances in potential conflict with the existing Montana law. The proposed amendments to the Uniform Health Care Information Act will remove some of the perceived problems in the application of the Act which have arisen in the last two years while continuing to preserve the confidentiality of health care information.

Testifying Proponents and Who They Represent:

Steve Browning, Montana Hospital Association
Larry Akey, Montana Health Network

Proponent Testimony:

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEB. 15, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

February 15, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 568 (first reading copy -- white), with statement of intent attached, do pass as amended.

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 17.

Following: "MCA"

Insert: "; AMENDING SECTION 16, CHAPTER 475, LAWS 1987; AND
PROVIDING AN EFFECTIVE DATE"

2. Page 23, line 6.

Following: "of"

Strike: "the"

Insert: "a written"

3. Page 23, line 23.

Following: line 22

Insert: "NEW SECTION. Section 14. Section 16, Chapter 475, Laws
of 1987, is amended to read:

"Section 16. Effective dates--termination date.

(1) Except as provided in subsections (2) and (3), sections
1 through 13 are effective October 1, 1987.

(2) The bracketed language in subsection (5) of
section (1) is effective July 1, ~~1989~~ 1991.

(3) The bracketed language in subsection (3) of
section (9) terminates July 1, ~~1989~~ 1991."

Renumber: subsequent sections

4. Page 24.

Following: line 6

Insert: "NEW SECTION. Section 17. Effective date. [Sections 5
and 7 of this act] are effective on July 1, 1991."

Amendments to House Bill No. 568
First Reading Copy

Requested by Rep. Mercer
For the Committee on the Judiciary

Prepared by John MacMaster
February 14, 1989

1. Title, line 17.

Following: "MCA"

Insert: "; AMENDING SECTION 16, CHAPTER 475, LAWS 1987; AND
PROVIDING AN EFFECTIVE DATE"

2. Page 23, line 23.

Following: line 22

Insert: "NEW SECTION. Section 14. Section 16, Chapter 475, Laws
of 1987, is amended to read:

"Section 16. Effective dates--termination date.

(1) Except as provided in subsections (2) and (3), sections
1 through 13 are effective October 1, 1987.

(2) The bracketed language in subsection (5) of
section (1) is effective July 1, ~~1989~~ 1991.

(3) The bracketed language in subsection (3) of
section (9) terminates July 1, ~~1989~~ 1991.""

Renumber: subsequent sections

3. Page 24.

Following: line 6

Insert: "NEW SECTION. Section 17. Effective date. [Section 5 of
this act] is effective on July 1, 1991."

4. Page 23, line 6.

Following: "(d)"

Strike: "the"

Insert: "a written"

JUVENILE JAIL REMOVAL INITIATIVE

The Montana Board of Crime Control, through a grant from the Office of Juvenile Justice and Delinquency Prevention has supported the work of a subcommittee of the Youth Service Advisory Council with the task of studying the juvenile jail removal issue. The subcommittee representing youth courts, law enforcement, prosecutors, county commissioners, youth advocates and legislators, was charged with developing a plan to remove juveniles from adult jails for presentation to the 1989 legislature.

The goal statement adopted by the committee at their first meeting was:

"To define detention and develop a statewide detention plan, for presentation to the 1989 Legislature, which addresses the service care needs and protection of those youth requiring detention, the economic and public safety needs of the communities and the legal responsibilities mandated by Federal and State law."

The goal of total removal of youth from adult jails is derived from a collection of sources which are perceived to be not only mandatory but a reflection of a matured society. Removal of youth from adult facilities finds its roots primarily in these areas:

I. Juvenile Justice and Delinquency Prevention Act (JJ&DPA) - The JJDP Act, originally passed in 1974 providing funds to improve state and local juvenile justice programs. The Act was amended in 1980 and 1984 to require the total removal of juveniles from adult facilities by December 8, 1988. The act provided the state with \$225,000 in grant funds annually for the purpose of reducing the number of youth held in adult ails. It further prescribed precise detention target levels for each state to maintain their eligibility for federal funds. The act was reauthorized in 1988 and the funding was increased to \$325,000 per year. Believing that urban areas have other options available, the Act allows exceptions for "rural areas". Significantly, the act specifically allows for a 24 hour intake hold prior to the Youth Court detention hearing in rural areas. Yellowstone and Cascade Counties do not have the 24 hour hold provision as do other Montana communities. The most recent amendments to the Act allows the Administrator to make exceptions to the 1988 deadline for states who have made significant progress towards removal.

II. Federal Case Law - There has been case law that has assisted in the removal of youth from adult facilities. The most often cited case is the Tewksbury case in Oregon (9th Circuit). The Tewksbury case held that jailing juveniles was in and of itself, a violation of their due process. The general finding of fact in these cases is that youth do not belong with adult prisoners, regardless of sight and sound separation.

III. National Jail Standards - The National Sheriff's Association and the American Bar Association have adopted jail standards which prohibit holding juveniles in adult facilities. A 40 member National Coalition for jail reform, which includes the National Association of Counties, have adopted the policy of not holding juveniles in adult jails.

IV. Montana Legislation - The 1987 Montana Legislature passed legislation (MCA 41-5-305,306) that requires that juveniles held past their detention hearing must be placed in a juvenile facility. Implementation of this law was delayed until July 1, 1989.

Defining and Quantifying the Problem:

"Detention" in the context of this study refers to that period during which a youth is being held in the physical custody of law enforcement awaiting his final dispositional placement.

Complicating the development of a statewide plan is the fact that careful screening of youth has resulted in an infrequent need to detain juveniles. A recent survey of city and county jails revealed that only about 7.4 youth are being held at any one time statewide and that only 3 of those youth are held longer than 24 hours. A closer look at the data and trends in youth placement indicate a significant increase in the number of youth awaiting a final disposition being placed in state institutions for 45 day evaluations. It is the belief of the committee that this increase in evaluation population is directly related to the reduction in youth being held in jail and are, in fact, the same population; i.e., youth requiring some level of security prior to their final dispositional placement. Including the average daily population of youth receiving evaluations with those youth being held in jails increases the number of youth to 36 daily.

Having quantified the present population, the committee began to try to project the future need for secure beds. The committee agreed that many placements made at the state institutions, ostensibly for evaluations were really made because adequate alternatives did not exist. The fact that the state has backed into practice of providing evaluations to pre-dispositional youth has provided an incentive to send youth out of the community rather than establish services closer to home. That practice has also added to the serious overcrowding of our two state institutions threatening the quality of service to committed youth.

Although most of the committee's attention was focused on providing a solution to the for long term detention needs, it was realized that providing affordable community based services could greatly affect the number of youth requiring services in a secure facility.

THE PLAN

Several strong philosophical beliefs guided the decisions made by the committee in developing the final recommendations for detention and are important to it's understanding. The committee believes:

- a. There should be clear lines of authority for both the administration and financial responsibility of providing detention.
- b. The responsibility for operation of detention services should be as close to the delivery of services as possible.
- c. The financial responsibility should rest as close to those making the decision to place a youth in detention as possible.

- d. Youth should be served as close to home as possible and in the least restrictive environment.
- e. That extreme care be given to not invest in unnecessary construction of new facilities.

LOCAL GOVERNMENT:

To this end, the committee believes that authority for youth detention should remain a local government responsibility and should be supported by a dedicated revenue source established by the legislature.

NO CONSTRUCTION:

A variety of options requiring the immediate development of new secure detention facilities were discarded in the final product of the committee. This due to a concern that using historical data on the use of jails and state institutions for holding youth was not an accurate reflection of future needs once affordable care was made available in the communities.

USE MOUNTAIN VIEW AND PINE HILLS SCHOOLS:

The plan developed by the Jail Removal Committee will remove juveniles from jails by providing secure detention through a temporary arrangement with Mountain View to provide predispositional secure care for girls and Pine Hills to provide the same services for boys while counties develop their own resources. It will also provide a funding source to counties to provide for their detention and detention alternatives.

PROVIDE REVENUE SHARING:

The committee has recommended that development of the alternative programs such as staff secure shelter care, holdovers and attendant care programs is of utmost importance in pursuit of the philosophy of providing care for youth as close to home as possible and in the least restrictive environment. Providing services in the community is also generally seen as being less costly than serving a youth in a secure facility. Because the numbers of youth requiring secure detention or evaluation are so few, changes in how youth are dealt with locally could reduce the need for secure beds statewide. The committee's approach will allow time needed to begin developing, or using, community options and to quantify the need for secure beds.

Under this proposal, Pine Hills and Mountain View will hold the predispositional youth and continue to hold evaluation youth on a fee for service basis for two to three years after implementation of the law. The committee feels it is imperative that a fee be charged in an effort to encourage the development of community based alternatives. At the end of a three year period, the state institutions intend to be out of the business of providing predispositional detention and/or evaluation services. Counties are encouraged to develop multi-county or "regional" detention facilities to provide for their long term detention needs. This can be accomplished through interlocal agreement or by contracting with the private sector.

The Department of Family Services will also begin charging for evaluations provided through the Youth Evaluation Program in Great Falls. At present, youth being

evaluated through that program are paid for by the department. Funding which supports the Y.E.P. program will be diverted to the Counties to enable them to purchase the same services.

FUNDING

It is the committee's intent to seek a state-wide, earmarked funding mechanism which would generate just over \$1 million. Ninety per cent of the collected funds will be distributed through the Department of Family Services to counties to provide for the predispositional needs of youth having contact with the justice system. The remaining ten per cent will be retained by the D. F. S. for a grant in aid program to assist those communities experiencing activity above the norm. The distribution formula will be based on juvenile population.

Counties will access their funds by developing a plan for the provision of pre-dispositional services and submitting it to the Local Youth Service Advisory Councils for review. As the Local Youth Service Advisory Councils are responsible for planning for the provision of youth services in Montana, it is considered critical they be kept informed and involved in this process. The director of the Department of Family Services will release each county's allocation providing the plans meet minimal requirements. Funds thus distributed can then be used by Youth Courts for buying services, either community based, regional, or during the first three years, from the state correctional schools.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 568

DATE FEB. 15, 1989

SPONSOR REP. MERCER

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
EARL W. BENNETT	Flathead County	X	
Howard W. Gipe	" "	✓	
M. P. WARNECKE	" "		
John Connor	Mt. County Atlys Assn	X	
Jo Acton	Youth Services Center	X	
Steve Nelson	Crime Control	X	
Dorothy McCARTER	ATTORNEY GENERAL	X	
John Byrnes	Probation	X	
GEOFF BIRBAUM	MT DES CHILD CARE ASSO	✓	
Robert Mullen	dfs	✓	
Albert Jacobson	Flathead Cty	✓	
Alfred Kasehake	Rosevelt Co.	✓	
Chas Cantzan	Lake Co Youth Guidance Hm	✓	
Jani Lamborn	Volunteers of America	✓	
Rita Dis Pasquelli	Volunteers of America	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.